

Information on the No FEAR Act

Introduction

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is now known as the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." In support of this purpose, Congress found that "agencies cannot be run effectively if those: agencies practice or tolerate discrimination." This information will inform you of the No Fear Act and other laws prohibiting discrimination and retaliation in the workplace illegal.

What does this training mean to you?

At the conclusion of this training you should:

- Understand the basic provisions of the No FEAR Act.
- Know what Antidiscrimination and Whistleblower Protection Laws protect you.
- Understand how to file a complaint alleging discrimination, retaliation, or a violation of the Whistleblower Protection Laws.

What is the No FEAR Act?

The Act requires Federal Agencies to:

- Reimburse the Treasury Judgment Fund for payments made in Federal District Court cases involving violations of discrimination and whistleblower laws.
- Post information on its public website relating to complaints of discrimination and annually report to Congress (<http://eeoa.army.pentagon.mil/web/>).
- Train and notify employees on their rights and protections under the antidiscrimination and whistleblower laws.

Antidiscrimination Laws

As a Federal Employee, you are protected from illegal discrimination in employment matters on the basis of your race, color, religion, sex, national origin, disability and age (40 years old and above).

Illegal discrimination occurs when one employee is treated differently than another employee, and treatment is based on" any of the factors listed above.

If you believe you have been discriminated against on any of these bases, you must contact the EEO Office within 45 days of the incident or learning of the discriminatory behavior.

Types of Employment Matters Covered

Antidiscrimination Laws protect you from discrimination concerning the terms and conditions of your employment. Examples of employment matters include:

- Hiring, promotion, pay, leave, awards, assignments, training, suspensions and terminations.
- Request for reasonable accommodation for religious reasons or for reasons based on disability.
- Harassment or creation of a hostile work environment based on race, color, religion, sex, national origin, disability, or age (40 years old and above).

Title VII of the Civil Rights Act

Title VII of the 1964 Civil Rights Act, as amended, protects employees from employment discrimination on the basis of sex, race, color, national origin, or religion. Sexual harassment and pregnancy discrimination are considered forms of sex discrimination and are prohibited by Title VII.

In addition to protection against discrimination because of religion, Title VII also establishes the agency's duty to provide reasonable accommodation for an employee's religious beliefs unless doing so would impose an undue hardship on the employer.

Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA) prohibits discrimination against Federal employees who are 40 years of age or older. The Act protects older employees from employment actions based on stereotypes or stigmas associated with age.

Rehabilitation Act

The Rehabilitation Act of 1973 prohibits employment discrimination against Federal employees with disabilities. In addition, agencies must provide reasonable accommodation for an employee or applicant with a disability. A "disability" is a physical or mental impairment that substantially limits a major life activity (breathing, walking, talking, seeing, hearing, or performing manual tasks).

- A temporary or short term illness is not a disability.
- An inability to work in only one type of job, for one particular supervisor, or in one location is not a disability.
- If you cannot perform the essential functions of the job, with or without reasonable accommodation, you are not qualified.

A reasonable accommodation is an adjustment to the work situation or environment to perform your job, as long as it is not an undue hardship to the agency.

- The accommodation does not have to be specifically what is requested by the employee. It does have to be a reasonable, effective accommodation.
- The Agency has no obligation to change performance standards or to eliminate essential functions of your position as a reasonable accommodation.

Equal Pay Act

The Equal Pay Act of 1963 prohibits federal agencies from paying employees of one sex lower wages than those of the opposite sex for performing substantially equal work.

Protection against Reprisal or Retaliation

The Antidiscrimination laws mentioned above protect you from reprisal for exercising your rights under those Acts. Protected activities may include filing a complaint of discrimination, requesting reasonable accommodation, giving evidence or testimony to an investigator or in a hearing, or complaining about or protesting perceived discrimination against you or another employee.

If you believe discrimination has occurred:

You must contact the EEO Office within 45 calendar days from when you first became aware of the alleged discrimination.

- EEO Office location and EEO complaint procedures should be posted on all employee bulletin boards and the organizational web sites.
- Employees complaining about age discrimination must give notice of intent to sue to the EEOC within 180 calendar days of the alleged discrimination.
- During the pre-complaint process, an EEO Counselor will try to resolve your complaint and you may be offered mediation to resolve your complaint.
- If the complaint is not resolved, you will be provided a Notice of Right to File a Complaint. You must file within **15 calendar days** from receipt of the Notice.
- In some case, extensions of the timeframe for contacting the EEO Office or filing a complaint is possible, if sufficient reason is presented.
- You should fully explain any delays for untimely contact or complaint filing. The EEO Officer will make the decision if the time limits may be extended.
- You are entitled to a reasonable amount of duty-time to prepare and present your complaint. There is no set time, however, duty time is granted in terms of hours.
- You are also entitled to official time to meet with a counselor, an investigator and/or to participate in the hearing.
- You may elect to be represented by an attorney or other person during any part of the complaint process. This designation must be made in writing.
- If your representative is a civilian employee, they are also entitled to a reasonable amount of duty time to represent you. The EEO Officer will determine if there is a conflict of interest between the representative's official duties and any representational activity.

Marital Status and Political Affiliation Discrimination

Federal law makes it illegal to discriminate against Federal Employees because of their marital status or political affiliation or retaliate against employees for exercising their rights.

If you believe discrimination has occurred on one of these bases, you may file a written complaint with the U. S. Office of Special Counsel. You may also pursue a complaint through the administrative process or the negotiated grievance procedure, if applicable.

Manager and Supervisor Responsibilities

A manager or supervisor is required to:

- Ensure you have legitimate, non-discriminatory reasons for the actions you take.
- Ensure you treat employees fairly and equitably.
- Provide reasonable accommodation to individuals with disabilities. Contact your EEO Office for questions about reasonable accommodations.
- Only disclose medical information separate from personnel files.
- Provide a reasonable amount of duty time to an employee who requests time to work on an EEO complaint.
- Cooperate with an EEO Counselor or investigator. Failure to do so may result in disciplinary action.
- Ensure employees are not subjected to hostile work environment because of their race, color, national origin, age, sex, or disability.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence:

- Violations of law, rule or regulation;
- Gross mismanagement;
- Gross waste of funds
- An abuse of authority; or
- A substantial and specific danger to public health or safety.

Employees may not disclose information if disclosure is specifically prohibited by law or if the information is required under Executive Order to be protected from disclosure in the interests of national security. A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under the Whistleblower Protection Act. 5 U.S.C § 2302(b)(8) prohibits retaliation against an employee or applicant for making a protected disclosure.

Filing a Whistleblower Protection Complaint

If the personnel action is within the jurisdiction of the Merit System Protection Board (MSPB), i.e., appeals of the personnel actions where the MSPB has jurisdiction, the appellant may file a complaint with the Office of Special Counsel (OSC) before filing an appeal with MSPB, or may choose to go directly to MSPB with an appeal. If the appellant chooses to go directly to MSPB:

- The appeal must be filed no later than 30 days after the effective date of the action being appealed, or 30 days after receipt of the agency's decision, whichever is later.
- If an Alternate Dispute Resolution (ADR) process is used the appellant may extend the filing period by 30 days, for a total of 60 days.
- If a stay request has been filed within 30 days after the date the appellant received the order ruling on the stay request.

If the personnel action does not fall under the MSPB jurisdiction, the appellant must first file a complaint with the OSC before filing an appeal with the MSPB (principally complaints of prohibited personnel practices and Hatch Act violations). A complaint may be filed with OSC by using Form OSC-11 (Complaint of Possible Prohibited Personnel Practice or other Prohibited Activity). Form OSC-11 can be obtained by contacting:

Office of Special Counsel (OSC)
Complaints Examining Unit
1730 M Street, NW Suite 218
Washington, DC 20036-4505
1-800-872-9855 (toll free), or 202-653-7188

After the OSC complaint is exhausted, the appellant may file an appeal with the MSPB:

- No later than 65 days after the date that OSC's written notification was issued terminating the investigation; or
- If notification was received more than 5 days after the date of issuance, the MSPB appeal must be filed within 60 days after the date OSC's notification was received.

If OSC has not notified the appellant that it will seek corrective action within 120 days of the filing date, the appellant may file an MSPB appeal at any time after the 120 day period expires.

For questions about Discrimination Laws or explanation of the EEO complaint process, contact your EEO Office or visit the EEOC at: www.eeoc.gov.

Information regarding the Whistleblower Act and Protections can be obtained from the local CPAC or visit Office of Special Counsel at: www.osc.gov.